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**In the Supreme Court of the United States**

OCTOBER TERM, 1959

FRANK WILKINSON, PETITIONER

v.

UNITED STATES OF AMERICA

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE FIFTH CIRCUIT

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BRIEF FOR THE UNITED STATES IN OPPOSITION

J. LEE RANKIN,

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**BRIEF FOR THE UNITED STATES IN OPPOSITION**

## **OPINION BELOW**

The opinion of the United States Court of Appeals for the Fifth Circuit (Pet. App. 4a-12a) is reported at 272 F. 2d 783.

## **JURISDICTION**

The judgment of the court of appeals was entered on December 14, 1959. The petition for rehearing was denied January 14, 1960. A petition for a writ of certiorari was filed on February 12, 1960. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## **QUESTIONS PRESENTED**

1. Whether the House Committee on Un-American Activities, possessing information that petitioner was

an important member of the Communist Party and had been sent to Atlanta by the Party for propaganda purposes, was authorized to subpoena and question him as to his membership and activities in the Communist Party in the course of a duly authorized investigation into Communist activities in the South:

2. Whether the action of the Committee in subpoenaing and questioning petitioner infringed his rights under the First Amendment.

3. Whether the question asked petitioner as to his membership in the Communist Party was pertinent to the subject under inquiry.

#### **STATUTE AND RULE INVOLVED**

2 U.S.C. 192 (R.S. 102, as amended) and the pertinent provisions of Rule XI of the House of Representatives, H. Res. 5, 83d Cong., 1st Sess. (99 Cong. Rec. 18), are set forth in Appendix A to the Petition for Certiorari (Pet. 1a-3a).

#### **STATEMENT**

Petitioner was charged in a one-count indictment (R. 1) with having knowingly, wilfully, and unlawfully refused to answer a pertinent question asked him by a subcommittee of the House Committee on Un-American Activities. The question was "Are you now a member of the Communist Party?"<sup>1</sup>

<sup>1</sup> The Committee reported the petitioner's contumacy to the House of Representatives (U.S. Ex. 2; R. 49), and the House certified the Committee's report to the United States Attorney for prosecution (H. Res. 685, 85th Cong., 2d Sess.; U.S. Ex. 13).

The government offered the following evidence at petitioner's trial: The Committee on Un-American Activities passed a resolution providing that public hearings be held to inquire into "[t]he extent, character, and objects of Communist colonization and infiltration in the textile and other basic industries located in the South, and Communist Party propaganda activities in the South," "[e]ntry and dissemination within the United States of foreign Communist Party propaganda," and "[a]ny other matter within the jurisdiction of the Committee which it, or any subcommittee thereof, appointed to conduct this hearing, may designate" (U.S. Ex. 1, pp. 2605-2606;<sup>2</sup> see Pet. 10-11, note 1). Pursuant to this resolution, the Chairman of the Committee designated a three-man subcommittee to hold a public hearing in Atlanta, Georgia, on July 29, 30, and 31, 1958 (U.S. Ex. 1, p. 2606). At the opening of the hearing, on July 29, the Chairman of the Committee stated that "[t]he hearings in Atlanta are in furtherance of a project of this committee on current techniques of the Communist conspiracy in this Nation" and were specifically designed to investigate information that "the principal Communist Party activities in the South are directed and manipulated by agents who are headquartered in Communist nests in concentration points in the metropolitan areas of the North" (*id.* at 2606, 2607). Petitioner stipulated at the trial that he had heard this statement.

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<sup>2</sup> U.S. Ex. 1 is the printed transcript of the hearings on July 29, 30, and 31, 1958, before the Committee on Un-American Activities, House of Representatives, 85th Cong., 2d Sess., entitled "Communist Infiltration and Activities in the South."

Petitioner appeared before the subcommittee on July 30. At that time the Committee had information that petitioner had been for a long period a member of the Communist Party, that he had previously been sent to Atlanta by the Party to conduct Communist activities in the South, and that he had been selected by the Party to lead the infiltration into the South of the Emergency Civil Liberties Committee which was allegedly a Communist front (R. 57-58).

After petitioner was sworn he stated his name, but refused to answer a question as to his residence.<sup>\*</sup> Instead, he said, "As a matter of conscience and personal responsibility, I refuse to answer any questions of this committee" (U.S. Ex. 1, p. 2681). He then gave the same answer to a question concerning his occupation. And, when he was asked the question, "Mr. Wilkinson, are you now a member of the Communist Party?", he again gave the same answer (*ibid.*).

The Staff Director of the Committee then stated at length to the witness the authority of the Committee and the purposes of the current investigation. (U.S. Ex. 1, p. 2682). He described the information which the Committee possessed that petitioner was "a hard-core member of the Communist Party," had been designated by the Party to create and manipulate certain organizations, including the Emergency Civil Liberties Committee, and had been sent to the Atlanta area by the Party for the purpose of developing sentiment hostile to the Committee in an attempt

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<sup>\*</sup> Although petitioner did not have counsel present, he stated that he knew that he had this privilege (U.S. Ex. 1, p. 2681).



to prevent the hearings (*ibid.*). He further said that, if the petitioner answered the question concerning his Party membership, the subcommittee would then inquire concerning petitioner's activities "as a Communist on behalf of the Communist Party," his activities from the standpoint of propaganda, and his activities attempting to destroy the F.B.I. and the Committee (*id.* at 2683).

The Staff Director then repeated the question: "Are you now a member of the Communist Party?" (U.S. Ex. 1, p. 2683). Petitioner answered: "I am refusing to answer any questions of this committee" (*ibid.*). After the Staff Director requested the Chairman of the subcommittee to order petitioner to answer the question, the Chairman again explained the purpose of the hearing: "[a]mong other reasons for pertinency of these hearings, would be the development of information which we feel you have, sir, that you could shed light on the current methods of organizing or regrouping or reconstructing of the party and subdivisions thereof" (*id.* at 2683). The Chairman of the subcommittee warned petitioner that "we disagree with your position as a basis for possible contempt proceedings" (*ibid.*), but advised him that he had the right to invoke the Fifth Amendment if he feared that his answers might incriminate him (*id.* at 2683-2684). The Chairman then ordered petitioner to answer the question concerning petitioner's Party membership (*id.* at 2684). Petitioner again refused to answer "any questions of this committee" on the ground that the "committee stands in direct violation by its mandate and by its practices of the first amendment" (*ibid.*).

At the close of the government's case—the defense offered no evidence—the district court ruled as a matter of law that the subcommittee had the right to ask the question concerning petitioner's membership in the Communist Party, that the question was pertinent to the subject under inquiry of the subcommittee,\* and that therefore petitioner had a duty to answer it (R. 97). The jury subsequently found petitioner guilty. On appeal to the Court of Appeals for the Fifth Circuit, the conviction was affirmed.

#### ARGUMENT

Petitioner's contentions, with but minor variations, were fully answered by this Court last Term in *Barenblatt v. United States*, 360 U.S. 109. We submit that there is no basis for asking the Court to reconsider the issues decided there.

1. Petitioner contends (Pet. 7-8) that Congress did not authorize the Committee to investigate propaganda activities against itself. This contention, however, is without substance on two grounds. First, this Court held in *Barenblatt* that "the House has clothed the Un-American Activities Committee with pervasive authority to investigate Communist activities in this country." 360 U.S. at 118. For this reason, the Court refused to construe Rule XI (H. Res. 5, 83d Cong., 1st Sess.), which established the Committee, to exclude the field of education from the Committee's authority. There is no more reason to construe Rule

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\* The court submitted to the jury the issue whether the pertinency of the question and its relation to the subject under inquiry were sufficiently explained to the petitioner by the subcommittee (R. 100).



XI to exclude the field of propaganda—at least when, as in the instant case, the Committee has information that the propaganda is being carried on at the direction of the Communist Party.

Second, the subcommittee's inquiry was not limited to petitioner's propaganda activities. At the beginning of the hearing, the Chairman of the Committee made clear that it was directed generally to Communist activities in the South and particularly those directed by Communist agents in northern cities (see *supra*, p. 3). Similarly, in reformulating the question, the Staff Director explained to petitioner that the subcommittee was investigating not only his propaganda activities but his activities on behalf of the Communist Party in general (see *supra*, p. 5). And, just before petitioner was ordered to answer the question, the Chairman of the subcommittee expressly stated that the subcommittee was questioning him, among other reasons, as to the organization and reconstitution of the Party (see *supra*, p. 5).<sup>5</sup>

Thus, the record demonstrates that petitioner had been fully informed that the subcommittee's inquiry

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<sup>5</sup> The subcommittee had authority to inquire into Party activities beyond those specifically stated in the resolution of Committee providing for the hearings since the subcommittee was also authorized by the resolution to investigate "[a]ny other matter within the jurisdiction of the Committee which it, or any subcommittee thereof, appointed to conduct this hearing, may designate" (see *supra*, p. 3). The Staff Director of the Committee clearly indicated, in testifying at petitioner's trial, that the subcommittee's inquiry was not limited to the three purposes specifically stated in the resolution (R. 69-70) and that petitioner was not being questioned solely concerning his propaganda activities directed against the Committee (R. 68).

was with regard not merely to propaganda but also to petitioner's other activities and information respecting the Communist Party. Even if we assume *arguendo* that the field of propaganda is not within the Committee's powers, nevertheless Communist Party organization and activities clearly are.

2. (a). Petitioner claims (Pet. 8-10) that, if Congress authorized the Committee to investigate propaganda activities against itself, such authorization violated the First Amendment. Petitioner's contention is answered by our showing above that the subcommittee's inquiry was not merely into petitioner's propaganda activities. But even if this were not so, this Court's holding in *Barenblatt* is conclusive. There, the Court held that the First Amendment does not bar inquiry concerning membership in the Communist Party, even in an area (higher education) as much related to the First Amendment as that involved here. See *id.* at 125-132; see also *Davis v. United States*, 269 F. 2d 357 (C.A. 6), certiorari denied, 361 U.S. 919.

(b). Petitioner's related argument (Pet. 10-12) that the Committee did not have a legislative purpose in subpoenaing petitioner but rather intended to harass or expose him is equally without merit. This Court has held that the federal courts should not inquire into the motives of committee members as long as a congressional purpose is being served. *Watkins v. United States*, 354 U.S. 178, 200; *Barenblatt v. United States*, *supra*, 360 U.S. at 133. And, moreover, the record of the hearing, as well as the record at the

trial, is completely devoid of any evidence that any of the Committee members had an improper purpose.

The information in the Committee's possession justified it in questioning petitioner concerning the subjects under inquiry. Certainly, the Committee's information, that petitioner was a leading and "hard-core member of the Communist Party" (see *supra*, p. 4), was a sufficient basis to query him concerning his Party activities and the Party's reorganization. And the Committee's further information that petitioner was a leader of Communist infiltration in the South who had previously come to Atlanta for this purpose (*supra*, p. 4) made it reasonable to query him concerning whether he was, in fact, one of the Party's northern agents whom the Committee believed was directing Party activities in the South (see *supra*, p. 3). While petitioner had refused to answer questions before a subcommittee in California in 1956, it was not improbable that by 1958 he might have changed his mind. Cf. *Flaxer v. United States*, 358 U.S. 147, 151.

3. Lastly, petitioner argues (Pet. 13-16) that the question asked petitioner was not pertinent to the matter under inquiry. Petitioner, however, failed to raise this objection before the subcommittee and, under this Court's decision in *Barenblatt, supra*, 360 U.S. at 123-124, is precluded from initially raising it in his contempt proceeding. Moreover, the record demonstrates not only that the question concerning Party membership was pertinent to the subject under inquiry but that this relation was explained to petitioner (see *supra*, pp. 4-5). The question of whether

petitioner was a Party member was directly pertinent to whatever succeeding questions the subcommittee might have asked concerning the Party's reorganization and reconstruction (since the Committee had information that petitioner was a leading Party member), the Party's propaganda activities in the South (since it had information that petitioner participated in such Party activities in that area), and the direction of the Party in the South by northern agents (since it had information that petitioner was a leader of Party infiltration in the South).

#### CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

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